



Federal Communications Commission
Washington, DC 20554

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SMALL ENTITY COMPLIANCE GUIDE

**Protecting Against National Security Threats to the Communications
Supply Chain Through FCC Program**

**FCC 20-176
WC Docket No. 18-89
Released July 13, 2021**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

Securing our nation's networks from those who would harm the United States and its people is more important than ever due to the outsized impact that the Internet has on our work, education, health care, and personal connections. Following the enactment of the Secure and Trusted Communications Networks Act (Secure Networks Act), the Federal Communications Commission (Commission) adopted the *Supply Chain Second Report and Order*, WC Docket No. 18-89, FCC 20-176, 35 FCC Rcd 14284, on December 10, 2020. Following Congressional adoption of the Consolidated Appropriations Act, 2021, which amended portions of the Secure Networks Act, on July 13, the Commission adopted the *Supply Chain Third Report and Order*, WC Docket No. 18-89, FCC 21-86, which amended our rules consistent with the Congressional amendments to the Secure Networks Act.

The rules and programs arising from the *Second Report and Order* and *Third Report and Order*, including the creation of a List of Covered Communications Equipment and Service (Covered List), a prohibition on the use of federal subsidies from programs administered by the Commission that provide funds to be used for the capital expenditures necessary for the provision of advanced communications service, as well as the Secure and Trusted Communications Network Reimbursement Program (Reimbursement Program), and a rule that requires all providers of advanced communications service to file an annual report certifying that they do not have equipment or services identified on the Covered List in their networks, will allow the Commission to protect and maintain the integrity of communications networks and supply chains.

II. COMPLIANCE REQUIREMENTS

The *Second Report and Order* and *Third Report and Order* implemented the Secure Networks Act. This includes the creation of the Covered List, the Reimbursement Program, and the annual filing requirement. These requirements are summarized below.

- **Requirement to Remove and Replace Covered Equipment or Services for ETCs receiving USF funds and those receiving reimbursement funds under the Reimbursement Program and Certifications (47 CFR § 54.11(a) - (d))**
- Each ETC receiving USF funds must certify prior to receiving those funds that it does not have any Huawei or ZTE equipment or services and will not use such equipment or services.
- This certification is not required until one year after the date the Commission releases a Public Notice announcing the acceptance of applications for filing during the initial filing window of the Reimbursement Program for those not participating in the Reimbursement Program.
- Those receiving funds under the Reimbursement Program will not need to certify until after expiration of their applicable removal, replacement, and disposal term.
- **Covered List and Covered Equipment and Services (47 CFR § 1.50002, § 1.50003)**
 - a. **Responsibility of Covered List and Updates**
 - The Public Safety and Homeland Security Bureau (PSHSB) must publish a Covered List that will encompass the applicable covered equipment and services.
 - PSHSB will monitor the status of the determinations made for the inclusion of covered equipment and services on the Covered List.
 - If a determination is reversed or modified, PSHSB must remove or modify the equipment or service from the Covered List.

- After every 12 months that the Covered List is not updated, PSHSB must issue a Public Notice indicating that no updates were necessary.
- The Covered List is available at: <https://www.fcc.gov/supplychain/coveredlist>.

b. List of Covered Communications Equipment and Services as dictated by Section 2 of the Secure Networks Act

- Equipment and services will be added to the Covered List if the equipment or service poses an unacceptable risk to the national security of the United States or the security and safety of U.S. persons, based on determinations by one or more of the following:
 - A specific determination made by any executive branch interagency body with appropriate national security expertise, including the Federal Acquisition Security Council established under section 1322(a) of title 41, United States Code.
 - A specific determination made by the Department of Commerce pursuant to Executive Order No. 13873 (relating to securing the information and communications technology and services supply chain).
 - The communications equipment or service being covered telecommunications equipment or service, as defined in section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1918).
 - A specific determination made by an appropriate national security agency.
- *And*, the equipment or service is capable of the following:
 - Routing or redirecting user data traffic or permitting visibility into any user data or packets that such equipment or service transmits or otherwise handles;
 - Causing the network of a provider of advanced communications service to be disrupted remotely; or
 - Otherwise posing an unacceptable risk to the national security of the U.S. or the security and safety of U.S. persons.
- **Prohibition on Use of Certain Federal Subsidies (47 CFR § 1.50001(a); 47 CFR § 54.10)**
- A Federal subsidy that is made available through a program administered by the Commission that provides funds to be used for capital expenditures necessary for the provision of advanced communications service may not be used to:
 - Purchase, rent, lease, or otherwise obtain any covered communications equipment or
 - Maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained.
- This prohibition applies to covered equipment or services beginning on the date that is 60 days after the date on which the equipment or service is placed on the Covered List.
- Advanced communications service is defined as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction.

- **Establishment of the Secure Networks Act Section 4 Reimbursement Program (47 CFR § 1.50004(a)-(n))**

- a. Eligibility**

- Providers of advanced communications service with ten million or fewer customers are eligible to participate in this Reimbursement Program and may be reimbursed for costs reasonably incurred for the replacement, removal, and disposal of covered (that is, Huawei or ZTE) communications equipment or services if the following are met:
 - The covered equipment or service to be removed, replaced, or disposed of was purchased, rented, leased or otherwise obtained before June 30, 2020;
- As of the date of submission of a reimbursement application, the provider must have developed the following:
 - A plan for permanent removal, replacement, and disposal of covered equipment or services; and
 - A specific timeline for the permanent removal, replacement, and disposal of such covered equipment or services, which must be submitted with the application.
- At the beginning of the date of approval of a reimbursement application, the provider cannot purchase, rent, lease or obtain covered equipment or services with reimbursement or private funds and in developing risk management practices, and it will consult with the standards, guidelines, and best practices set forth in the cybersecurity framework developed by the National Institute of Standards and Technology (NIST).

- b. Filing Window**

- The Wireline Competition Bureau (WCB) announced that the filing window will open at 12:00 AM Eastern on October 29, 2021, and will close at 11:59 PM Eastern on January 14, 2022. Additional filing windows may be announced as necessary if there is funding available.

- c. Application**

- Providers of advanced communications service interested in participating in the Reimbursement Program must submit an Application Request for Funding (FCC Form 5640) detailing the covered equipment and services being replaced; information on the replacement equipment and services; and the estimated costs of replacement. The application is available at <https://www.fcc.gov/supplychain>.

- d. Application Review Process**

- After the filing window closes, the Supply Chain Reimbursement Program Administrator (Program Administrator) and WCB will review the applications. During the review process applicants will have 15 days to cure deficiencies identified by the Program Administrator in their application before an application is denied as deficient.
- This review period is for 90 days, with WCB able to extend the period by an additional 45 days, if necessary.
- An applicant whose application is denied may not participate in the Reimbursement Program unless an additional filing window is opened.

e. Funding Allocation

- Once an application is approved, WCB will announce each applicant’s funding allocation of the initial \$1.9 billion appropriation. This will be announced via a Public Notice and through an email to the contact person on the application.

f. Priority Allocation

- If the total demand submitted by all eligible applicants exceeds the total funds available, then WCB must issue funding based on the following prioritization schedule:

Prioritization Schedule
Priority 1 Advanced communication service providers with 2 million or fewer customers.
Priority 2 Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as defined in Part 27, Subpart M of title 47, Code of Federal Regulations, or any successor regulation and health care providers and libraries providing advanced communications service.
Priority 3 Any remaining approved applicants determined to be eligible for reimbursement under the Program.

- WCB must continue to review all funding requests and issue funding based on the prioritization category until there are no funds remaining.
- If there is not enough money to fund within one prioritization category, then WCB will pro-rate among all eligible providers in that category.
 - Pro-rata will consist of the following:
 - Divide the total remaining funds available by the demand within that specific category;
 - Then, multiply the above number by the total dollar amount requested by each recipient in the category; and
 - Allocate funds to each recipient consistent with this above number.

g. Disbursements

- Recipients will need to submit Reimbursement Claim Requests using FCC Form 5640, available at <https://www.fcc.gov/supplychain>, after they incur actual costs to be reimbursed. This request must include supporting invoices and other cost documentation, as directed by WCB.
- Recipients are required to file all reimbursement claims within 120 days following the expiration of the one-year removal, replacement, and disposal term.
- Prior to the expiration of the 120-day deadline, recipients can request and receive a 120-day extension of the reimbursement claim deadline, if timely requested.

h. Removal, Replacement, and Disposal Timing

- Recipients must remove, replace, and dispose of covered equipment or services within one year of receiving an initial disbursement from their approved funding allocation.
- WCB may grant individual extensions on a case-by-case basis to recipients of up to six months if it determines that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal.
- The FCC may grant a general six-month extension to all recipients of reimbursements if it finds the following:
 - The supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the Program is inadequate to meet the needs of the recipients; and
 - It provides notice and a detailed justification for granting the extension to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

i. Disposal Requirements

- Recipients must dispose their covered communications equipment or service in a manner to prevent the equipment or service from being used in the networks of other providers of advanced communications service.
- The disposal must result in the destruction of the covered communications equipment or service, as well as any components, making the covered communications equipment or service inoperable permanently.
- Recipients must retain documentation demonstrating compliance with this requirement.
- Guidance regarding the disposal requirements is available at <https://www.fcc.gov/supplychain>.

j. Status Updates

- Recipients must submit status updates once every 90 days beginning on the date on which WCB approves their reimbursement application and up until the recipient has filed the final certification.
- The status updates must include the following information:
 - Efforts undertaken, and challenges encountered with regards to removing, replacing and disposing of covered communications equipment or service.
 - The availability of replacement equipment in the marketplace.
 - Whether the recipient has fully complied with or is in the process of complying with the commitments made in the recipient's application.
 - Whether the recipient has permanently removed, replaced, and disposed of all covered equipment or services as of the date of the submission of the recipient's application; and

- Whether the recipient has fully complied with or is in the process of complying with the timeline submitted by the recipient with their application.
- WCB will publicly post these status update filings on the Commission’s website within 30 days of submission.

k. Spending Reports

- Recipients must submit spending reports indicating how funds have been spent, including detailed accounting of the covered communications equipment or services permanently removed and disposed of, and the replacement equipment or services purchased, rented, leased or otherwise obtained, using reimbursement funds.
- These reports must be filed semiannually by February 10 and August 10, starting with the recipient’s initial draw down of disbursement funds and terminating once the recipient has filed a final spending report showing the expenditure of all funds received as compared to the estimated costs submitted.
- A final spending report will be due following the filing of a final certification by the recipient.
- WCB will make these reports available on the Commission’s website subject to confidentiality concerns consistent with the Commission’s rules.

l. Final Certification

- Recipients must file a final certification with the Commission within 10 days following the expiration of the removal, replacement, and disposal term.
- The recipient must indicate the following:
 - Whether it has fully complied with (or is in the process of complying with) all terms and conditions of the Reimbursement Program and the commitments made in the application of the recipient for the reimbursement.
 - Has permanently removed from the communications network of the recipient, replaced, and disposed of (or is in the process of permanently removing, replacing, and disposing of) all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application of the recipient for the reimbursement.
 - Has fully complied with (or is in the process of complying with) the timeline submitted by the recipient. The recipient will also be required to submit an updated certification if at the time the final certification is filed, the recipient has not fully complied with its obligations under the Reimbursement Program.
- If the recipient’s certification notes that it has not fully complied with the removal, replacement, and disposal of the covered equipment or service as required, then the recipient must file an updated certification when the recipient has fully complied.

m. Document Retention

- Recipients must retain all relevant documents, including invoices and receipts, pertaining to all costs eligible for reimbursement actually incurred during the removal, replacement, and disposal process.
- Recipients must retain the documentation for a period of 10 years after the date the final disbursement payment is received from the Reimbursement Program.

n. Audits, Reviews and Field Investigations

- Recipients will be subject to audits and investigations for purposes of evaluating the compliance with the statutory and regulatory requirements of the Reimbursement Program.

- Recipients must provide consent to allow vendors or contractors used by the recipients to release confidential information to auditors, reviewers or other representatives.
- Recipients must allow any representative appointed by the Commission to enter their premises to conduct these inspections.
- **Enforcement of Statutory and Regulatory Provisions (47 CFR § 1.50005)**
 - If a recipient violates the statutory provisions of the Secure Networks Act, the following actions will apply:
 - Repay the Commission all funds provided under the Reimbursement Program.
 - The recipient will also be barred from further participation in the Program.
 - Will be referred to appropriate law enforcement agencies or officials under applicable criminal and civil law.
 - May be barred by the Commission from participation in other programs of the Commission, including USF support.
 - For the above actions to apply, recipients must be provided a notice of the violation by WCB or the Enforcement Bureau and the recipient must be provided 180 days to cure the violation.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Second Report and Order* contains new information collection requirements applicable to all advanced communication service providers, as dictated by Section 5 of the Secure Networks Act.

- **Reporting Requirements for Advanced Communication Service Providers (47 CFR § 1.50007)**
 - All advanced communication service providers must submit an annual report identifying whether they have any covered equipment and services listed on the Covered List.
 - Advanced communications service is defined as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction. (47 CFR § 1.50001(a))
 - If the provider does have any covered equipment and services, it must submit a detailed justification as to the reasons for acquiring such equipment and services.
 - Providers will need to submit the initial annual report 90 days after the Office of Economics and Analytics issues a Public Notice announcing the availability of the reporting platform. Thereafter, providers will need to submit a report once per year on or before March 31 for the prior year.
 - If the provider certifies that it does not have any covered equipment and services, this provider will not be required to submit any more reports, unless it later purchases, rents, leases or obtains any covered equipment or service.

IV. IMPLEMENTATION DATE

The rules in the *Second Report and Order* became effective March 13, 2021, except for those needing Office of Management and Budget approval under the Paperwork Reduction Act. Those were approved on October 6, 2021, following the Commission publishing a notice of approval in the Federal Register. The rules in the *Third Report and Order* became effective October 22, 2021.

V. INTERNET LINKS

A copy of the *Second Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-20-176A1.pdf>.

A copy of the Federal Register Summary of the *Second Report and Order* is available at: <https://www.federalregister.gov/documents/2021/01/13/2021-00052/protecting-against-national-security-threats-to-the-communications-supply-chain-through-fcc-programs>.

A copy of the Covered List published by PSHSB is available at: <https://docs.fcc.gov/public/attachments/DA-21-309A1.pdf>.

A copy of the *Third Report and Order* is available at: <https://www.fcc.gov/document/fcc-acts-protect-national-security-communications-supply-chain-0>.

A copy of the Federal Register Summary of the *Third Report and Order* is available at: <https://www.federalregister.gov/documents/2021/08/23/2021-17279/protecting-against-national-security-threats-to-the-communications-supply-chain-through-fcc-programs>.

A copy of the Federal Register summary announcing OMB approval of any rules requiring OMB approval pursuant to the Paperwork Reduction Act is available at: <https://www.federalregister.gov/documents/2021/10/06/2021-21783/protecting-against-national-security-threats-to-the-communications-supply-chain-through-fcc-programs>.

A website devoted to these Supply Chain proceedings is available at: <https://www.fcc.gov/supplychain>.